IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.70 OF 1995

Kalu @ Mahindra Ravindra Waghmare — Appellant
(Org.Accd.No.3)

Vs.

1. The State of Maharashtra

2. Smt.Vanita Dnyaneshwar Jankar,
Adult, Occ:Household,
R/at Ramnagar Zopadpatti,
Bopkhel, Pune. — Respondents

Mr.Vijay Peshave for appellant.
Ms.P.H.Kantharia, APP for State.

CORAM: S.S.PARKAR & ANOOP V.MOHTA,JJ.

February 14, 2005.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is filed by original accused no.3 who was convicted for offence under section 302 of IPC and sentenced to life imprisonment so also convicted for offences under Sections 427 and 451 of IPC and sentenced on each count to pay a fine of Rs.500/- in default to suffer R.I. for three months by the judgment and order dated 17/1/1995 delivered by the Addl. Sessions Judge, Pune in Sessions Case No.329 of 1992.

2. The prosecution case briefly narrated is as

follows:

. The incident had taken place on 2/4/1992 at about 10-30 p.m. in the residential area of Ramnagar in village Bopkhel where the accused as well as the complainant were residing. Complainant along with deceased Dnyaneshwar and others was waiting for their brother Krishna who was to return from his work-place. Krishna was returning at about 10-30 p.m. when three accused persons and one Ganesh stopped him and demanded money for liquor. As he refused to give the money, there was quarrel. Complainant and deceased Dnyaneshwar, who are brothers, went there. The accused assaulted the complainant and his brothers with sticks and hockey sticks. The brothers tried to escape by rushing to their house. They bolted the house from inside. The accused pelted stones and thereafter forced their way inside the house from rear side by removing the tins on the back side walls. After entering the house of the complainant appellant stabbed Dnyaneshwar with weapon like knife in his stomach and chest and thereafter all the accused ran away. Dnyaneshwar fell down and became unconscious. He was taken to the Sassoon Hospital in an auto rickshaw where he was

declared dead. Complainant Ramchandra lodged his first information report to the police on the basis of which crime was registered under Sections 302, 451, 427 read with Section 34 of IPC against three accused persons.

3. After registering the complaint PSI Rokade visited the place of incident and drew spot panchanama. Accused no.1 Raju and accused no.2 Kamlakar were arrested on 3/4/1992 at about 12.45 p.m. while appellant-Kalu was arrested on 4/4/1992 at about 10.30 p.m. At the time of arrest the clothes of the accused were seized and were later on sent to CA for examination. On 7/4/1992 accused volunteered to produce the knife which was recovered from water tank in Bhatnagar area. The said knife was also sent for examination of CA just as the clothes of the accused and the deceased were sent. After completion of investigation the charge-sheet was filed and the case was committed to the Sessions Court.

4. The Sessions Court framed charges against the accused for offence under Section 302 read with Section 34 of IPC, for offence under Section 451 of

IPC simplicitor and in the alternative for offence under Section 452 read with Section 34 of IPC. Lastly charge was also framed for offence under Section 427 read with Section 34 of IPC. All the accused pleaded not guilty to the said charges.

5. On behalf of the prosecution 13 witnesses were examined. PW 1 is Ramchandra Jankar, the complainant who is brother of the deceased Dnyaneshwar and an eye witness. PW 2 is Krishna Jankar, the other brother of the complainant and the deceased who was also an eye witness to the incident. PW 3 is S.G.Thite who was the eye witness from the locality but had turned hostile. PW 4 is G.T.Gaikwad, panch for the spot panchanama. PW 5 is B.G.Margaje who was panch for seizure of jacket from the person of the appellant but turned hostile. PW 6 is A.M.Bhalerao who was panch for the discovery of knife at the instance of the accused but had turned hostile. Similarly PW 7 M.S.Bansode another panch for recovery of knife had also turned hostile. PW 8 B.T.Mandlik has proved the panchanama of seizure of clothes of appellant including his jacket. PW 9 is Dr.Pherwani who conducted autopsy on the dead body. PW 10 is PSI G.K.Rathod attached to Dapodi Police Chowki at the

relevant time who had recorded the FIR. PW 11 is Baban Bhiwar who was another eye witness from the locality but had turned hostile. PW 12 is PI Rokade who investigated the case and lastly PW 13 is S.G.Rathi who was also an eye witness from the same locality but had turned hostile. The defence of the accused was of denial and false implication. Accused nos.1 and 2 denied their presence at the time of the incident and Dnyaneshwar was assaulted by the people from the area as he used to prohibit women from collecting scrap material and firewood etc.

6. After considering the entire evidence on record the Sessions Court convicted accused nos.1 and 2 for offences under Sections 323, 451 and 427 of IPC and sentenced them to pay a fine of Rs.500/- in default to suffer RI for three months on each count. They were acquitted of the offence under Section 302 of IPC. The appellant-original accused no.3 was held guilty for offences punishable under Sections 302, 451 and 427 of IPC. He was sentenced to life imprisonment under Section 302 of IPC and imposed fine of Rs.500/- for each of the offences under Sections 451 and 427 of IPC in default to suffer RI for three months. The amount of fine, if paid, was

directed to be paid to the widow of Dnyaneshwar and in case of her re-marriage to the mother of the deceased. The said order of conviction and sentence has been impugned in this appeal only by the appellant-original accused no.3.

7. The learned defence Advocate firstly contended that there is discrepancy in the evidence of two eye witnesses and their evidence is not borne out or supported by any other corroborating circumstances and, therefore, the appellant is entitled for acquittal. He then argued that there is omission in the police statements about the rear side door having been broken by the accused. By referring to the evidence of PW 11 Baban Bhiwar who was eye witness to the incident, he argued that the incident had taken place outside the house and, therefore, the evidence of the eye witnesses that the deceased was stabbed inside the house should not be believed. He next contended that motive is not alleged against the appellant and there was no intention on his part to murder the deceased and there was no premeditation on his part and the assault having taken place pursuant to the quarrel, the case would fall under Section 304 Part II of IPC. He lastly submitted that if the

offence falls under Section 304 Part II of IPC, the accused being a young boy of 18 years at the time of trial, the provisions of the Probation of Offenders Act may be applied.

8. The prosecution is relying on the evidence of eye witnesses who are brothers of the deceased, corroborated by the medical evidence and the FIR lodged immediately after the incident and the spot panchanama which was drawn the same night at about 1-30 a.m. At the time of arrest of the appellant his clothes were seized under panchanama and his jacket was found stained with human blood. Besides, after the arrest of the appellant there was recovery of blood stained knife at the instance of the appellant on which blood of group "O" was found which was also found on the clothes of the deceased as per the CA report. Thus the evidence of eye witnesses has been corroborated by the immediate FIR lodged by the complainant, the medical evidence, recovery of the blood stained jacket of the appellant and the discovery of the blood stained knife at the instance of the appellant.

9. Besides leading the evidence of two brothers

of the deceased the prosecution had led the evidence of three witnesses from the locality who are PW 3 Thite, PW 11 Bhiwar and PW 13 Rathi. They however turned hostile. The independent witnesses from the locality not supporting the prosecution case at the trial is not an infrequent experience of the Courts. The witnesses from the locality are initially hesitant to give statement against the accused and if they happen to give statement to the police against the accused initially, they do not support the prosecution at the time of trial. But the absence of independent witnesses cannot weaken or belittle the evidence of the eye witnesses who are close relations of the deceased. In this respect reference may be made to the judgment of the Supreme Court in the case of Gangadhar Behera v. State of Orissa reported in **(2002) 8 SCC 381** in which it is held that merely because the witnesses are related to the deceased, that by itself would not affect the credibility of testimony of such witnesses. Both the brothers of the deceased by name Ramchandra PW 1 and Krishna PW 2 were the natural witnesses. The incident occurred when PW 2 Krishna was stopped by the accused persons and the quarrel had taken place when he refused to pay them amount demanded by the accused for the

purchase of liquor. PW 1 Ramchandra and deceased Dnyaneshwar hearing the quarrel from their house rushed from the house. The incident had taken place at about 10-30 in the night when these brothers along with their mother and other relatives were waiting in their veranda for return of Krishna. When the accused started assaulting three brothers they escaped by going to their house and bolting the door from inside.

10. The evidence of PW 1 cannot be disbelieved simply because though he claims to have been injured pursuant to the assault by the accused with sticks and hockey sticks, no injury certificate was produced on record. In fact PW 10 who recorded the complaint was at the police station when initially injured Dnyaneshwar was taken to the police station pursuant to whose direction deceased was taken to Sassoon Hospital. He has deposed that the complainant was also injured. When Dnyaneshwar was stabbed in his chest and stomach as a result of which he had become unconscious on the spot, that was not the occasion to obtain medical treatment and certificates for the two brothers. As soon as Dnyaneshwar was taken to Sassoon Hospital he was declared dead by the doctor

before he was admitted and, therefore, Ramchandra went to the police station and lodged his FIR. No doubt timing is not mentioned in the FIR but PW 10 PSI Rathod has mentioned that Dnyaneshwar was brought to the police station at about 11 - 11.30 p.m. that night. After that complaint was recorded he handed over the investigation to PI Rathod who went to the place of incident and drew spot panchanama at about 1.30 a.m. that very night. Thus the investigation had commenced immediately in the case. The complaint was lodged without any loss of time. In the complaint the assault was attributed to the appellant with weapon like knife in the stomach and chest of Dnyaneshwar. As per the spot panchanama (Exh.34) blood was found not only on the floor but even on the cot and walls of the front room of the house. There is mention in the spot panchanama that the tin sheets of the wall on the rear side of the house were removed. There was no question of the complaint mentioning about forcing open the door from the rear side of the house. There is mention about removal of the tin sheets of the rear side wall of the house. Spot panchanama mentions that front portion of the house was "pakka" construction and the rear side of the house was having "kachcha" construction. If it

was not the case of the eye witnesses or of the complainant that rear side door was broken open, then there cannot be question of the FIR mentioning breaking open of the door. Even in the Court what the complainant has deposed is that the accused removed the tin and entered into the house from rear side which was having "kachcha" construction with tin roof. The spot panchanama has been proved by panch G.T. Gaikwad PW 4.

11. The complainant has deposed that he and his brother Dnyaneshwar went outside to intervene in the quarrel between their brother Krishna, PW 2 and the accused. The accused started assaulting Dnyaneshwar saying that he does not allow the women of the locality to collect scrap material and fire wood and graze goats in CME area. Accused no.1 was having stick and accused no.2 was having hockey stick. They hit them with those sticks. These three brothers ran to their house and bolted the door from inside. Thereafter the accused forced their entry from the rear side of the house and the appellant stabbed Dnyaneshwar with knife. His evidence is corroborated by PW 2 Krishna as well as by the complaint which was lodged immediately within an hour’s time that night.

Even the medical evidence corroborates the said version. PW 9 Dr.Pherwani had performed autopsy on the dead body. As per his evidence Dnyaneshwar had received following six external injuries:-

> (1) An incised stab wound present on the front of abdomina 3" above the ulblicus 1 1/4 in 1/4" and going deep in abdominal cavity, margins regular, antemortem clots present.
>
> (2) An incised wound Rt. side of chest, 7th inter costal space, anteriorty 3/4" x 1/4" into going deep in chest cavity, margins clear cut ante mortem clots present.
>
> (3) An area of contused abrasion left hand finger no.2.
>
> (4) An area of contused abrasion Rt. shoulder 1" x 1".
>
> (5) An area of contused abrasion Rt. hand 1/2" x 1/2".
>
> (6) An area of contused abrasion Ft. & Lt. knee each 1" x 1/2".

All the injuries were ante mortem and were of recent origin. Injury nos.1 and 2 were caused by sharp edged weapon. The doctor found following internal injuries:

> Haematoma, chest wall corresponding to injury no.2.
>
> Plural cavity on Rt. side shows blood. Rt. lung shows laceration at the base. There is haematoma anterior abdominal wall. Peritoninal cavity is full of blood and blood clots.

Stomach shows cut through and through.

The miscentry is cut with blood all around.

The cause of death has been given as traumatic and haemorrhagic shock due to stab injuries. According to the Medical Officer injury nos.1 and 2 were on the vital part of the body and were sufficient in the ordinary course of nature to cause death. Both the injuries, according to the doctor, could be caused by knife Article No.9. Thus the ocular evidence has been corroborated by the medical evidence. According to the eye witnesses appellant had stabbed Dnyaneshwar in his stomach with weapon like knife.

12. The said medical evidence further corroborates the eye witnesses' ocular evidence. According to the complainant when Dnyaneshwar went out to intervene in the quarrel which accused had with PW 2 Krishna, the accused started assaulting Dnyaneshwar with stick and hockey stick as he was not allowing the womenfolk from the said area to collect scrap material, firewood and grazing of the goats in CME area. Out of the six external injuries received by Dnyaneshwar two are incised wounds and the rest were contusions and abrasions which could be caused by sticks and hockey sticks. It was only when they ran to their

house that the accused chased them and after removing tin sheets forced their way into the house and then appellant stabbed Dnyaneshwar with knife.

13. Appellant was arrested on 4/4/1992 and thereafter he had volunteered to produce knife. It was recovered at his instance. At the time of arrest the clothes worn by him were attached in the presence of panchas. The prosecution had led the evidence of both the panchas. Panch Margaje PW 5 having turned hostile, another panch PW 8 Mandlik was examined who has supported the seizure of clothes including jacket from the person of the appellant at the time of his arrest. It is argued by the defence advocate that though panchanama (Exh.41) does not mention about any blood stains on the jacket, panch Mandlik has deposed that there were some blood stains on the jacket. May be the panch was exaggerating at the time of his deposition in the court or he might have noticed some spots on the jacket but were not mentioned in the panchanama. The fact remains that the said jacket was sent to CA who noticed stains of human blood on that jacket. Merely because the witnesses have not said or identified the said jacket (Article no.8) having been put on by the appellant at the time of

the incident, the evidence of attachment of jacket cannot be disbelieved. The absence of reference to blood stains on the said jacket would go to show that the Police Officer did not falsely mention the existence of blood stains on the jacket. It is common knowledge that sometimes blood stains on the clothes are not noticed by the bare eyes but the same are noticed by the chemical analyser by the use of special machinery in that office as in this case. It is well settled that finding of human blood on the clothes of the accused is an incriminating circumstance which he is liable to explain. Even if this circumstance is excluded from consideration there is enough other evidence proving the guilt of the appellant.

14. There is discovery of blood stained knife at the instance of the appellant. Both the panch witnesses to the said discovery have unfortunately turned hostile. They are PW 6 Bhalerao and PW 7 Bansode. The Recovery panchanamas (Exhs.39 and 37) bear the signatures of the panchas. PW 6 has referred to accused no.2 for having discovered the knife instead of appellant but the Investigating Officer has proved that recovery. There is nothing

against the Investigating Officer to disbelieve his evidence as regards recovery. In this connection reference may be made to the judgment of the Supreme Court in the case of State Government of NCT of Delhi v. Sunil & anr. reported in **(2001) 1 SCC 652** in which it was held that recovery at the instance of the accused should ordinarily be believed on the evidence of Police Officer and it is for the accused to show that such evidence is unreliable. That knife is article no.9 which was sent to CA and as per CA report (Exh.59) the knife (article no.9) was found stained with blood of group "O" which blood group was also found on the clothes of the deceased. According to that very report human blood was found on the jacket of the appellant (article no.8). As per the CA report (Exh.60) the sample blood of Dnyaneshwar was found to be of group "O". The blood of the appellant was also sent but as per CA report (Exh.62) the results were inconclusive and, therefore, blood group of the appellant was not known.

15. In any event we are satisfied with the evidence of complainant and his brother i.e. PW 1 and PW 2, who were eye witnesses to the incident. which is corroborated by immediate complaint lodged

by PW 1 and supported by the medical evidence. Their evidence is also supported by the spot panchanama. PWs 1 and 2 are the natural witnesses as the incident of assault itself had taken place in the residential house of the complainant and his two brothers. Unless the assault had taken place in the house itself blood would not have been found on the floor of the house, cot as well as on inside walls of the house. Thus the ocular evidence of two brothers is quite reliable as it is supported and corroborated as observed hereinabove. Whether initially the assault itself took place inside the house of the deceased or initially the incident of quarrel and assault with sticks took place outside the house and thereafter the appellant chased and entered the house after removing tin sheets from the rear side and stabbed the deceased, the intention is quite obvious. The appellant was carrying with him a knife which is a big knife generally called as ‘Rampuri’ knife which shows that the appellant was carrying knife with him which was used by him to assault the deceased. If deceased was stabbed with knife in his stomach and on his chest, there cannot be any other intention except to murder the deceased nor it can be said that the appellant had not intended to cause the injury which

resulted in his death when the knife was pierced into his stomach and chest which proved to be the cause of his death. The offence committed by the appellant is undoubtedly culpable homicide amounting to murder as defined under Clause 1 of Section 300 of IPC. There is no circumstance which brings the case under any of the exceptions enumerated in Section 300 of IPC. We have, therefore, absolutely no hesitation in confirming the order of conviction and sentence recorded against the appellant by the trial Court.

16. In the result, the order of conviction and sentence recorded by the Addl. Sessions Judge, Pune in Sessions Case No.329 of 1992 against the appellant-original accused no.3 is confirmed and the appeal is dismissed. The appellant shall surrender to his bail bond forthwith.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)